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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In Re
PG&E CORPORATION,
and
PACIFIC GAS AND ELECTRIC
COMPANY

Debtors.

Affects:

PG&E Corporation
Pacific Gas & Electric Company
Both Debtors

* All papers shall be filed in the Lead
Case, No. 19-30088 (DM).

Case No. 19-30088 (DM)

Chapter 11

(Lead Case—Jointly Administered)

**LINDA GARWOOD’S MOTION TO
DEEM HER LATE-FILED PROOF
OF CLAIM TIMELY;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: March 24, 2021

Time: 10:00 a.m. (Pacific)

Place: **Telephonic Appearances Only**
United States Bankruptcy

Court: Courtroom 17, 16th Floor
San Francisco, CA 94102

Objection Deadline: December 1, 2020

**TO THE HONORABLE DENNIS MONTALI, UNITED STATES
BANKRUPTCY COURT JUDGE, THE OFFICE OF THE UNITED STATES
TRUSTEE, AND ALL INTERESTED PARTIES:**

Claimant Linda Gardwood (“Ms. Garwood”) moves to deem her late-filed proof
of claim (“POC”) timely.

1 **I. Summary of Argument**

2 A POC may be deemed timely upon a showing of excusable neglect and lack of
3 prejudice. In this case, because Ms. Garwood's prior attorneys inadvertently neglected
4 to file a timely POC on her behalf even though her 1500 square foot home and large
5 detached garaged was completely destroyed by the 2018 Camp Fire.

6 Ms. Garwood then came to her new attorney of record for help to rectify an
7 error not of her own creation. Because there is no danger of prejudice to the Debtors
8 as Debtors' estates are solvent, and all creditors stand to be paid, the Motion should be
9 granted to allow this fire victim survivor to have her POC deemed timely.

10 **II. Factual Background**

11 **A. Garwood's Claims Arising From Camp Fire and Retention of New**
12 **Counsel.**

13 Ms. Garwood is a survivor of the 2018 Camp Fire. Specifically, at the time of
14 the fire, she resided at 4031 Pentz Road, Paradise, California 95969 ("Property") and
15 evacuated from this location, which ultimately resulted in the total loss of her home
16 and all personal property, among other damages.

17 Ms. Garwood sought counsel from attorneys. However, these attorneys
18 inadvertently neglected to timely file a POC on her behalf. Accordingly, Ms.
19 Garwood sought the legal services of a new attorney.

20 Ms. Garwood's new attorneys told her a motion must be filed make her proof of
21 claim timely. In the meantime, Ms. Garwood's new attorneys and her team worked
22 up Ms. Garwood's case and are expected to ask for approximately \$770,000 just for
23 damage to her real property structures. Undeniably, Ms. Garwood has significant
24 damages in personal property loss, zone of danger and nuisance damages as well. She
25 must not be denied justice because her prior attorneys inadvertently did not file a
26 timely POC.

27 **B. Pertinent Bankruptcy Background**

28 On January 29, 2019, PG&E Corporation and Pacific Gas and Electric

1 Company (“Debtors” or “PG&E”) commenced with the Court voluntary cases
2 (“Chapter 11 Cases”) under chapter 11 of the United States Code (“Bankruptcy
3 Code”). PG&E’s chapter 11 filings were necessitated by a confluence of factors
4 resulting from catastrophic fires that occurred in Northern California before the
5 Petition Date, and PG&E’s potential liabilities arising therefrom.

6 The deadline for filing POCs regarding any prepetition claim including, but not
7 limited to, all claims of Fire Claimants, Wildfire Subrogation Claimants,
8 Governmental Units and Customers, and to avoid doubt, including all secured claims
9 and priority claims, against either of the Debtors was October 21, 2019 at 5:00 p.m.
10 (“General Bar Date”).

11 The deadline for filing claims was extended to December 31, 2019 (“Extended
12 Bar Date”), solely to benefit any non-governmental Fire Claimants who did not file
13 Proofs of Claim by the General Bar Date. See, Dk. No. 4672.

14 On January 31, 2020, as Dk. No. 5590, the Debtors filed an Amended Chapter
15 11 Plan Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization
16 Dated January 31, 2020.

17 On February 7, 2020, as Dk. No. 5700, the Debtors filed a Disclosure Statement
18 for the Amended Plan.

19 On February 19, 2020, as Dk. No. 5835, the Debtors filed Motion for Entry of
20 an Order (I) Approving Form and Manner of Notice of Hearing on Proposed
21 Disclosure Statement; (II) Establishing and Approving Plan Solicitation and Voting
22 Procedures; (III) Approving Forms of Ballots, Solicitation Packages, and Related
23 Notices; and (IV) Granting Related Relief (“Solicitation Procedures Motion”).

24 On March 17, 2020, the Solicitations Procedures Motion was approved.

25 After filing multiple iterations of the plan, on June 19, 2020, as Dk. No 8048,
26 the Debtors filed an Amended Joint Chapter 11 Plan of Reorganization dated June 19,
27 2020 (“Final Plan”).
28

1 On June 20, 2020, post-voting and hotly contested confirmation hearings, the
2 bankruptcy court entered an order confirming the Final Plan. See, Dk. No. 8053.

3 **III. Legal Argument**

4 In a Chapter 11 case, the time to file a proof of claim may be extended under
5 certain circumstances. Fed. R. Bank. Pro. 3003(c)(3); Fed. R. Bank. Pro. 9006(b)(1).
6 The bankruptcy court has “broad equitable powers” in a Chapter 11 case regarding the
7 timing requirement for proofs of claim. *Pioneer Inventory Services v. Brunswick*
8 *Associates Limited Partnership*, 507 U.S. 380, 389 (1993). Altogether, Rule
9 9006(b)(1) allows “late filings caused by inadvertence, mistake, or carelessness, not
10 just those caused by intervening circumstances beyond the party's control.” *Id.*, at 381.
11 Even a creditor that received notice may file a proof of claim notwithstanding the
12 expiration of a claims bar date in a Chapter 11 case upon showing “excusable
13 neglect.” *Id.* At 394-95 (“Had respondents here been prevented from complying with
14 the bar date by an act of God or some other circumstance beyond their control, the
15 Bankruptcy Court plainly would have been permitted to find ‘excusable neglect’
16 [under FRBP 9006].”).

17 In considering whether a creditor’s failure was the product of “excusable
18 neglect,” the court should take “account of all relevant circumstances surrounding the
19 party’s omission,” including “the danger of prejudice to the debtor, the length of the
20 delay and its potential impact on judicial proceedings, the reason for the delay,
21 including whether it was within the reasonable control of the movant, and whether the
22 movant acted in good faith.” *Id.* at 395; see also *Corning v. Corning (In re Zilog,*
23 *Inc.)*, 450 F.3d 996 (9th Cir. 2006) (noting *Pioneer*’s non-exhaustive list of relevant
24 factors). Again, a late-filed proof of claim is allowable where a creditor had actual
25 notice of the bankruptcy but, due to some external reason, failed to file a proof of
26 claim or did not realize that she had to, before the bar date. See, e.g., *ZiLOG, Inc. v.*
27 *Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1003-07 (9th Cir. 2006) (applying the
28 *Pioneer* factors). Altogether, Rule 9006(b)(1) allows “late filings caused by

1 inadvertence, mistake, or carelessness, not just those caused by intervening
2 circumstances beyond the party's control.” *Pioneer*, 507 U.S. at 381. Here,
3 consideration of all four *Pioneer* factors—and a fifth engrafted onto the *Pioneer*
4 analysis by some courts—weighs in favor of Ms. Garwood

5 Because in this case, there is no danger of prejudice to the Debtors, the first
6 *Pioneer* factor weighs overwhelmingly in Ms. Garwood favor. Debtors’ estates are
7 solvent, and all creditors stand to be paid. See, e.g., *In re Best Payphones, Inc.*, 523
8 B.R. 54, 75-6 (Bankr. S.D.N.Y. 2015) and *In re Sheehan Mem’l Hosp.*, 507 B.R. 802,
9 803 (Bankr. W.D.N.Y. 2014) (where the chapter 11 estate is solvent, “the proper
10 remedy for a late filing is not the expungement of a claim, but its allowance as a
11 tardily filed claim only.). Secondly, upon understanding the Ms. Garwood had no
12 POC on file, her new attorney will file a POC concurrent with this Motion and before
13 the deadline to submit claims. Ms. Garwood’s worked up claim will be submitted to
14 the Fire Victims Trust before the deadline of February 26, 2021. Thirdly, the delay in
15 filing the Subject Proof of Claim is reasonable considering it was no fault of her own
16 that she failed to file a POC. That mistake was made by her prior attorneys. Lastly,
17 any prospect of prejudice beyond solvency is unlikely given (a) all distributions have
18 not been made; and (b) the value of Ms. Garwood’s claim relative to the value of
19 Debtors’ estates is low. See, e.g., *In re Keene Corp.*, 188 B.R. 903, 910 (Bankr.
20 S.D.N.Y. 1995) (size of the late claim in relation to the estate is a consideration in
21 determining prejudice).

22 Again, Ms. Garwood’s claim has been fully worked up by her new attorney
23 who can file her claim immediately after so long as this Motion is granted.
24 Accordingly, granting this Motion shall prejudice no other party’s rights or interests.
25 Denying this motion because of her prior attorney’s mistake in failing to file a timely
26 proof of claim, on the other hand, would severely prejudice Ms. Garwood for the rest
27 of her life.

1 **IV. Conclusion**

2 Ms. Garwood respectfully requests this Court enter an order under Bankruptcy
3 Rule 9006(b)(1) as follows:

- 4 1. Granting the Motion;
- 5 2. Finding that Subject Proof of Claim filed by Ms. Garwood is to be
6 deemed timely;
- 7 3. Granting such other or further relief as the Court deems just and proper.
- 8

9 Dated: February 23, 2021

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14 Attorneys for Claimant

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